

REMARKS/ARGUMENTS

The Examiner is thanked for his review of the application.

Claims 1-6, 9-11, and 14-19 remain in this application. Claims 1, 3, 6, 14, 16-19 have been amended. No new matter has been added.

In the Office Action dated September 12, 2005, the Examiner has rejected Claims 14-19 under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Regarding Claims 14-19 the Examiner has stated that "the body of the claims does not require or recite the use of any technology at all. The recited steps could all be done mentally in a person's brain or on paper. Technology is required to be considered statutory subject matter. The claims only recite an abstract idea. The recited steps do not apply, involve, use, or advance the technological arts since all of the recited steps can be done with no technology at all. As to the technological arts recited in the preamble ('computer implemented method'), mere recitation in the preamble or mere implication of employing a machine or article of manufacture to perform some or all of the recited steps does not confer statutory subject matter to an otherwise abstract idea unless there is a positive recitation in the claim as a whole to breathe life and meaning into the preamble. In the present case because nothing in the body of the claim brings any technology into the body of the claim, the claims are still considered to be non-statutory for failure to recite a method that is considered to be within the technological arts."

Claims 14, 16-18 have been amended to recite "using the computer system" in the body of the claims thereby complying with 35 U.S.C. 101.

In the same Office Action, the Examiner has also rejected Claims 3, 16 under 35 USC 112, first paragraph, stating that they fail "to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Applicant has recited that the computer code selects products that provide optimization of total profit. How can the computer code know what products this will be? One of skill in the art would have no way to know how to give the computer code the ability to 'see into the future' and predict what products will satisfy which is claimed. Undue

experimentation would necessarily be involved and one of skill in the art would not be able to make and/or use the invention was claimed. Also lending to the non-enablement of the claim is the fact that it is rejected under 35 USC 112,2. If you don't know what that term means or what is being claimed, you cannot make the invention. Claims 3, 16 are not enabled to one skilled in the art.

Claims 3, 16 have been amended to clarify their respective recited language and now complies with 35 U.S.C. 112,2.

The Examiner has rejected Claims 1-6, 9-11, 14-19 under 35 U.S.C. 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding Claim 1, the Examiner asked "what is the language 'wherein the optimizing of prices meets the plurality of rules' intending to recite? This looks like a method step to the examiner, but the preamble and the rest of the claim are directed to an apparatus, not a method. What structure does this limitation result in? This is not clear. Also, this is a confusing limitation because previously it has been recited that there is code for relaxing rules and applicant has argued this for patentability, but at the very end of the claim it is recited that all rules are satisfied. This renders the claim indefinite."

Regarding Claim 14, the Examiner asked "in a similar sense as to claim 1, how can applicant recite at the end of the claim that the optimizing of prices meets the plurality of rules. Previously it is claimed that rules are relaxed because they are not feasible. How can the rules be recited as being satisfied when some are being relaxed because they are not feasible? This language seems to contradict the previous recitations in the claims."

Regarding Claim 3, the Examiner has stated that he "finds the claim to be indefinite. This is because the way the claim is written it does not make sense. The claim reads, 'selects products provides an optimization.' This portion reads very poorly and makes no sense. What is being claimed here? Is applicant claiming that the optimization is done with respect to total profit? The scope of this claim is not clear. The examiner honestly does not understand what is being claimed here. Correction is required."

Regarding Claim 16, the Examiner asked "what is being claimed here? Is applicant claiming that the optimization is done with respect to total profit? What is meant by reciting the

selection of products that provide an optimization of total profit? Can a product provide this optimization? The scope of this claim is not clear. The examiner honestly does not understand what is being claimed here. Correction is required.”

Claims 1, 3, 14, 16 have all been amended accordingly and are now in compliance with 35 U.S.C. 112, second paragraph.

Regarding Claims 6, 19, the Examiner asked “what is ‘bound data’? What does this refer to and what is the scope of this term? Data is data, what you call it may or may not mean anything and in this case it is not clear to the examiner what this means and what the scope of this term is. This is still unclear.” Amended Claims 6, 19 now recite “wherein the new data comprises new price data and price bound data.” Examples of price bound data can be found on page 28 lines 5-11 of Applicants’ specification.

In the same Office Action the Examiner has rejected Claim 1 under 35 U.S.C. 102(b) as being anticipated by Reuhl et al. (5873069).

Regarding Claims 1, 14, the Examiner has stated that “Reuhl discloses a method and system where sales and price data is entered into a computer system and the system then ‘optimizes’ the prices of numerous products based on the inputted sales data. The software has criteria (rules) for figuring out the final pricing of the products. The rules include looking for sales prices, advertised prices, etc., as well as applying a cent code to the resulting lowest price, and then checking to ensure that the new active price with the cent code is not greater than the competitor price. **If the new price with the cent code results in the price being higher than the competitor price, that cent code is ignored** (an infeasible rule if relaxed) and a new active price is calculated with a new cent code (another rule is implemented). The rules are prioritized as claimed because the rules for figuring out prices look to various conditions and moves on to other conditions if prior conditions are not feasible (result in the price being higher than the competitor). The storage medium of claim 1 is disclosed in column 3, lines 29-32. The steps of storing initial prices are satisfied because at some point you must input some kind of price into the system. This is inherent. Reuhl discloses code for designating a subset of products to optimize prices for. This is because the computer system (software) only optimizes prices for products that have had new sales data entered into the system. So if sales data for televisions is updated in the system, the prices for batteries will not be changed. The examiner encourages


applicant to read the entire patent to Reuhl, but also points applicant to the following sections of particular relevance to the claimed invention. See column 6, lines 29-44; col. 7, lines 23-39; col. 8, lines 12-27; col. 10, lines 28-32; col. 11 and lines 26, to column 12, line 52.” (Emphasis added).

Applicants respectfully submits that **ignoring** a rule, i.e., eliminating a rule, is very different from “**incrementally relaxing** any infeasible rule of the plurality of rules which has a lower priority than the at least one lower priority infeasible rule to allow the at least one lower priority inflexible rule to become feasible” as recited by Claims 1 and 14 (emphasis added). Rule relaxation of the present invention is described in detail from page 20, line 19 to page 22, line 14 of the specification. In addition, rules are relaxed incrementally and in accordance with their priority and not in a random manner (see also page 26, lines 1-12). Accordingly, the process of incrementally relaxing lower priority rules in a systematic manner until a desired result is obtained is far superior to simply ignoring/eliminating rule(s) in an ad-hoc manner.

Specific support can be found on page 22, lines 2-6 of the specification, “In the preferred embodiment the lower priority rules are checked before higher priority rules. If it is found that rules with lower priorities than that priority of the LPI rule may be relaxed to a point that allows the LPI rule to become feasible, then these rules with lower priorities are relaxed incrementally so that the LPI rule becomes feasible (step.620)” (emphasis added). A detailed example of the use of this novel incremental relaxation technique is also provided from page 22, line 14 to page 25, line 12. Reuhl ‘069 does not teach nor suggest the claimed invention and hence base Claims 1, 14 are allowable over the cited references. In addition, dependent Claims 2-6, 9-11, 15-19 are also allowable for at least the same reasons Claims 1, 14 are allowable.

In sum, Claims 1-6, 9-11, 14-19 remain in this application and are now believed to be allowable. Base Claims 1, 14 have been amended and are now believed to be allowable. Dependent Claims 3, 6, 16-19 have been amended and are now believed to be allowable. Dependent Claims 2-6, 9-11, 15-19 which depend therefrom are also believed to be allowable as being dependent from their respective patentable parent Claims 1, 14 for at least the same reasons. Hence, Examiner's rejection of dependent Claims 2-6, 9-11, 15-19 are rendered moot in view of the amendment to base Claims 1, 14. Applicants believe that all pending Claims 1-6, 9-11, 14-19 are now allowable over the cited art and are also in allowable form and respectfully request a Notice of Allowance for this application from the Examiner. The commissioner is authorized to charge any fees that may be due to our Deposit Account No. 50-2766 (Order No. DEM1P009). Should the Examiner believe that a telephone conference would expedite the prosecution of this application, the undersigned can be reached at telephone number 925-570-8198.

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